

BOARD OF ZONING APPEALS PUBLIC HEARING MINUTES

The regular meeting of the Board of Zoning Appeals was held on
Monday, October 19, 2020 at 7:00 p.m.

Due to the COVID-19 Pandemic emergency, the October 19, 2020 meeting of the Board of Zoning Appeals is being held electronically pursuant to Virginia Code Section 2.2-3708.2(A)(3), the Continuity of Government ordinance adopted by the City Council on June 20, 2020 or Section 4-0.01(g) in HB29 and HB30, enacted by the 2020 Virginia General Assembly (Virginia Acts of Assembly Ch. 1283 and 1289), to undertake essential business. All of the members of the Board and staff are participating from remote locations through Zoom Webinar. This meeting is being held electronically, unless a determination is made that it is safe enough to be held in person in the City Council Chamber at 301 King Street, Alexandria, VA. Electronic access will be provided in either event. The meeting can be accessed by the public via Zoom by the following link: https://zoom.us/webinar/register/WN_amPgfn9KTG2kW2MsMzDjhg

*Please note: On October 19, the Alexandria City Council Special Meeting will be broadcast live on government Channel 70. Due to this, the Board of Zoning Appeals Public Hearing will not be broadcast on Channel 70 or streamed live on the City's website.

The proceedings of the meeting were recorded; records of each case are on the web at www.alexandriava.gov/dockets and on file in the Department of Planning & Zoning.

Members Present: Laurence Altenburg, Chair
Mark Yoo, Vice Chair
Lee Perna, Secretary
Erich Chan
Quynn Nguyen
Jon Wacławski

Absent Members: Daniel Poretz, Excused

Staff Present: Tony LaColla, Department of Planning & Zoning
Mary Christesen, Department of Planning & Zoning
Sam Shelby, Department of Planning & Zoning
Marlo Ford, Department of Planning & Zoning
Margaret Cooper, Department of Planning & Zoning
Kaliah Lewis, Department of Planning & Zoning
Christina Brown, City Attorney's Office

CALL TO ORDER

1. Mr. Altenburg called the October 19, 2020 Board of Zoning Appeals to order at 7:00 p.m.

DEFERRED ITEMS

2. BZA #2020-00014

401 Argyle Drive

Public hearing and consideration of a Special Exception to construct a 6.00 foot fence in the secondary front yard on a corner lot; zoned: R-8/Single-Family.

Applicant: Crislyn Lumia

BOARD OF ZONING APPEALS ACTION, OCTOBER 19, 2020: On a motion by Mr. Yoo, seconded by Ms. Nguyen, the Board of Zoning Appeals voted to approve the special exception approved the variance subject to all applicable codes, ordinances and staff recommendations with the conditions that the fence be 50 percent open, located three feet from the secondary front lot line and that landscaping would be planted to screen the fence. The motion carried on a vote of 6 to 0.

Reason:

The Board disagreed with staff analysis and found that the case met the criteria for a special exception. Mr. Waclawski asked the applicant for the location of the properties they cited that were configured similarly to their proposal. The applicant responded that two properties along Monticello Boulevard were configured as proposed and were within one-third mile of the subject property.

Mr. Perna asked staff to clarify why another case on the docket, a special exception for a fence on a corner lot, had staff recommending approval. Staff replied that the configuration of the contextual block faces for each case were different.

Mr. Waclawski asked how staff analyzed the special exception standard requiring compatibility with surrounding area or zone. Staff replied that specifically in the case of a special exception for a fence on a corner lot, they principally rely on the configuration of the contextual block face but that configuration of other dwellings within the surrounding area are also a consideration.

Ms. Nguyen asked for staff to clarify the regulations for fences on corner lots in terms of where they can be located, their height and whether they are open or closed fences. Staff explained that if the properties within the contextual block face are developed with dwellings that have their primary fronts along the subject property's secondary front yard, that closed fences up to six feet tall are permitted only half the distance between the dwelling and the secondary front lot line. If all dwellings within the contextual block face have secondary fronts along the subject property's secondary frontage, then a six-foot fence would be permitted up to three feet from the subject property's secondary front lot line by-right.

Mr. Altenburg asked staff to confirm the configuration of houses along Monticello Boulevard outside of the contextual block face. Staff confirmed that the dwellings at 303 and 300 Monticello Boulevard are corner lots with their primary fronts along Monticello Boulevard. Mr. Altenburg stated that the applicant's proposal would not be compatible with this configuration.

Mr. Yoo expressed support for the applicant's request. He stated that the dwelling at 308 Monticello Boulevard, across Argyle Drive from the subject property, had the same configuration as the subject property. He found that the applicant made a reasonable attempt to make their proposal compatible with the neighborhood and that the three-foot setback would provide sufficient space for landscaping to screen the fence.

Mr. Perna spoke in support of the request but was still concerned, despite staff's explanation, that the applicant's request and another request for a fence on a corner lot had different staff recommendations.

Mr. Waclawski echoed support for the applicant's request, stating that the difference between staff's recommendation of a five-foot setback and the proposed three-foot setback would not be significant. He found that the request met the special exception standards and acknowledged that the most impacted, adjacent neighbors had submitted letters of support. He also mentioned the letters of opposition related to traffic and pedestrian safety concerns but found that these concerns were sufficiently addressed.

Mr. Perna, Mr. Yoo, Ms. Nguyen and Mr. Altenburg confirmed with the applicant that they would accept the conditions that the fence be 50 percent open, located three feet from the secondary front lot line and that landscaping would be planted to screen the fence. The applicant accepted these conditions.

Speakers:

Crislyn Lumia, applicant, presented the case and answered questions from the Board.

3. BZA #2020-00016

5201 Dover Place

Public hearing and consideration of a Variance to construct a deck in the required rear yard; zoned: RT/Townhouse.

Applicant: Endalkachew L. Asfaw

BOARD OF ZONING APPEALS ACTION, OCTOBER 19, 2020: On a motion by Mr. Perna seconded by Ms. Nguyen, the Board moved to approve the variance. The motion failed on a vote of 3 to 3. Mr. Perna, Ms. Nguyen, Mr. Chan voted in favor, and Mr. Yoo, Mr. Waclawski, and Chairman Altenburg dissented.

Reason: The Board disagreed with staff analysis and found that the case did not meet the criteria for a variance.

Chairman Altenburg indicated that the revised new deck proposal is more reasonable and the deck setback from the shared party wall does try to address the issue of privacy for the neighbor. The issue is whether the strict application would unreasonably restrict the use of the property. The adjacent property will see it as a substantial detriment. In addition, there is a “by right” option that the applicant could pursue. The “by right” option may not be what the applicant wishes for, but an alternative option exists.

Mr. Perna asked the question if adding screening affects light or air depending on the type of screen as this is a criteria that is evaluated. He further indicated that when the case was heard in September, he had some of the same concerns as Mr. Yoo and the magnitude of the deck being requested. The new revised proposed deck is about forty percent larger than the neighbor’s ground level patio. The applicants could have requested a smaller deck. He believed the deck would be out of scale. He indicated that he would have liked a more reasonable accommodation and was concern that the magnitude of what was being proposed was getting unreasonable; however, other units in the development could build a similar scale deck by right.

Mr. Yoo indicated that the applicant is asking for more than what is necessary. He indicated that part of the issue is the daycare which is the homeowners own doing. The applicant has not clearly addressed the disability hinderances of the house. He indicated that applicants could reconfigure the house to move the rear door to the opposite side that could access a side yard deck, or they could install an elevator or lift which he would support.

Ms. Nguyen in response to Mr. Yoo stated that the renovations that would be necessary is an undue expense. The proposal before the Board is reasonable. The main living space that the family uses is on the second floor as it appears from the rear yard.

Mr. Wacławski indicated that if the child’s disability issues were taken out of the application for the purpose of the deck given the nature of the non-conforming property for the sake of the family’s use, a variance would still be needed and was not sure of the argument. Second, it is not the business of the Board to police neighbor disputes.

Speakers:

Endalkachew L. Asfaw, property owner, made the presentation.

Karim Khodjibaev, owner of 5203 Dover Place, spoke in opposition over concerns of privacy and that allowing the deck will set the precedent for other owners in the development to petition the Board.

NEW BUSINESS

4. BZA #2019-00007

2 East Mason Avenue

Public Hearing and consideration for a Special Exception to retain a 6.00 foot fence in the secondary front yard; zoned: RB/Townhouse.

Applicant: Elizabeth Jardim

BOARD OF ZONING APPEALS ACTION, OCTOBER 19, 2020: On a motion by Mr. Yoo and seconded by Mr. Wacławski, the Board of Zoning Appeals voted to recommend approval of the special exception. The motion carried on a vote of 5 to 1. Ms. Nguyen dissented.

Reason: The Board of Zoning Appeals agreed with the staff analysis.

Mr. Yoo indicated that the green space on the other side of the sidewalk and the wide curb area did not pose any visual impact.

Mr. Altenburg indicated that the Board of Zoning Appeals frown on “after-the fact” approval; however, given that there were not site line issues, he generally supports the special exception.

Speakers:

Elizabeth Jardim, property owner, made the presentation.

5. BZA #2020-00018

611 Cameron Street

Public Hearing and consideration of an Appeal of a Zoning Determination Letter; zoned: RM/Townhouse.

Applicant: James B. Michels, represented by Clarissa K. Pintado, Esq.

BOARD OF ZONING APPEALS ACTION, OCTOBER 19, 2020: Mr. Yoo, seconded by Mr. Wacławski, the Board made a motion to defer the case. After further discussion. Yoo withdrew his motion and Mr. Wacławski agreed to the withdrawal.

On a new motion by Mr. Perna, seconded by Mr. Yoo, the Board voted to uphold the Director’s Determination. The motion carried on a vote of 6 to 0.

Reason: The Board found that the appellant failed to demonstrate, by a preponderance of evidence, that the Director’s determination was incorrect or unreasonable.

Mr. Yoo asked the appellant’s attorney to clarify her interpretation of the RM zoning regulations related to two-family dwellings. Ms. Pintado replied that the subject property could

not be considered a two-family dwelling as configured because it and the dwelling at 609 Cameron Street were located on separate lots.

Mr. Altenburg asked if the properties 611 and 609 Cameron Street had different owners and paid taxes independently of one another. Ms. Pintado confirmed this.

Mr. Perna asked staff to explain recent changes to the Zoning Ordinance related to abutting structures. Staff replied that the amendments included removal of the language “party wall” from the two-family and townhouse dwelling definitions. Staff explained that these amendments were not effective until October 17, 2020 and that the Director’s determination was made prior to this date. Mr. Perna confirmed with staff that, under the amendments effective October 17, 2020, townhouses or two-family dwellings would not be required to have a party wall separating them.

Ms. Nguyen confirmed with staff that the dwelling units at 609 and 611 Cameron Street are on separate lots and within one building. She also asked staff to explain the different types of two-family dwellings permitted in the RM zone. Staff explained that the RM zone permits both duplex (one dwelling unit above another) and semi-detached (two dwelling units side-by-side) two-family dwellings.

Mr. Altenburg stated that he was struggling to understand the case and felt that the Board had been brought into the middle of a conversation between the appellant and the Director without having been provided sufficient background. He was not clear on the background of the case and said he was unable to understand what led the Director to make his determination.

Ms. Nguyen asked if a duplex dwelling would be permitted in the RM zone. Staff replied that the RM zone does permit duplex dwellings but that the subject property would have to be configured differently in order to allow a duplex configuration. The appellant disagreed.

Mr. Altenburg asked staff to explain how the Director determined the subject property’s existing configuration. Staff replied that the Director reviewed documents provided by the appellant and within City records to establish the existing configuration. Staff stated that they mostly rely on survey plats, completed by surveyors licensed in the Commonwealth of Virginia, who also certify that the information provided therein is correct, to establish facts.

Mr. Yoo was concerned that the Zoning Ordinance had been modified since the Director’s determination and was unsure what the effect of these amendments would have on the case.

Mr. Wacławski asked staff to confirm that the Director’s determination was made prior to the amendments. Staff confirmed that the request for the determination was made on July 13, 2020, before the amendments. This determination resulted in the appeal which also occurred prior to the amendments. Therefore, the matter before the Board was whether the Director’s

determination was correct given the rules at the time the determination was made, not considering the amendments.

Ms. Nguyen stated that the appellant found the existing configuration of the subject property to be a single-family dwelling. Mr. Altenburg stated that the Director found that the subject property was one-half of a two-family, semi-detached building and asked staff if the amendments would render the appeal moot. Staff replied that under the amendments, the appellant's request would still constitute a use not permitted by the Zoning Ordinance. Mr. Altenburg stated that staff's reply did not reflect what the appellant had appealed. He stated that determination could have been affected by the amendments and that further consideration could be warranted.

Mr. Yoo agreed with staff that the Board should consider whether the Director correctly applied the Zoning Ordinance prior to the amendments but was unsure how to proceed.

Mr. Perna stated that a deferral would not change whether the Director's determination was correct at the time when the determination was made.

Mr. Altenburg confirmed with staff that the Board should be considering the correctness of the Director's determination at the time it was made, not considering the amendments. Ms. Brown confirmed.

Mr. Perna stated that the question at hand is whether the Director was correct in determining whether the subject property is one-half of a two-family, semi-detached dwelling. Citing Sections 2-140, 3-1105(c)(1), and 3-1106(2)(a), Mr. Perna found that the RM zone's density and lot requirements as well as its bulk and open space requirements, taken together, suggest that each duplex dwelling shall be located on its own lot and that semi-detached, two-family dwellings can be located on two separate lots. As such, Mr. Perna found that the subject property constituted one-half of a semi-detached two-family dwelling and expressed support for the Director's determination.

Mr. Yoo agreed with Mr. Perna's statements. He stated that the structure was constructed prior to the adoption of the City's Zoning Ordinance and that it could be a nonconforming two-family dwelling. He stated that, based on the exhibits, the appellant had not presented sufficient information to overturn the Director's determination.

Speakers:

Clarissa K. Pintado, attorney representing the appellant, presented the case and answered questions from the Board.

Yvonne Weight Callahan, Vice-President of the Old Town Civic Association, spoke in support of the Director's determination. She stated that the subject property and 609 Cameron Street are paired together and asked the Board to uphold the Director's determination.

Leslie Ariail, former owner of 607 Cameron Street and board member of Historic Alexandria Foundation, stated that 609 and 611 Cameron Street were constructed at the same time. She stated the subject property was already occupied by four dwelling units. She stated that the subject property should only be occupied by a single dwelling unit.

6. BZA #2020-00019

520 & 522 Queen Street

Public Hearing and consideration of a Variance to request an expansion of noncomplying access to parking from the street rather than an alley or interior court; zoned: RM/Townhouse. Applicants: Michael and Lori Rowen

BOARD OF ZONING APPEALS ACTION, October 19, 2020: On a motion by Ms. Nguyen, seconded by Mr. Yoo, the Board of Zoning Appeals voted to deny BZA2020-00019. The motion carried 5 to 1. Mr. Altenburg dissented.

Reason: The Board agreed with the reasons outlined in the staff report.

Mr. Altenburg asked if he was going for under 4 feet to appease staff. The applicant said he request 3'11" as that was wide enough for him.

Mr. Perna asked for clarification on the first application for the access. The applicant explained that he applied in August 2019, paid the city, and was given a permit, but later discovered the curb cut would require a variance because it is in the historic district.

Ms. Nguyen asked if the applicant had applied for a sign saying no parking past this point to help with cars that are blocking portions of the access. The applicant said they had not.

Mr. Yoo asked if the applicant had the ability to apply for a no parking sign. Staff said this would not be under Planning and Zoning purview, but the applicant could work with Transportation and Environmental Services to request a sign.

Mr. Altenburg asked the applicant and staff when the access apron was first installed. The applicant stated it was there when he bought the property in 2014. Staff said the install date was unknown, but it appears in photographs included in the 1990 open space easement documents.

Mr. Perna said that he finds signage to be effective as they are good visual reminders of where to park. He also said that the expansion of the curb cut would be expanding the noncompliance of the existing curb cut.

Ms. Nguyen agreed with Mr. Perna and said that it would be expanding a noncompliance and reduce space for public parking for private use of nonconformance.

Mr. Yoo said that a standard for a variance is there is no other remedy, but in this case, there is a possible remedy with parking signs. However, he is not in agreement that parking signs are a benefit, as he feels the modest curb cut would be less intrusive than signs. While there are valid arguments on either side, if there are other remedies that do not require a variance, he believes it disqualifies the applicant for a variance.

Mr. Altenburg said the sign remedy relies on the city and the actions of the public and therefore is out of the applicant's control. In other cases, remedies are within the property owner's control. And while signs may be a potential remedy that the public can offer, because of sign clutter concerns in Old Town, there may be opposition to that solution.

Mr. Yoo agreed that the alternate solution of signs is not known to be a by-right solution.

Ms. Nguyen stated that the applicant does not lose access to his parking if the curb cut is not expanded.

Mr. Altenburg said the existing curb cut is out of proportion for the space available for the parking. He said that parking in Old Town is difficult as people do not pay attention to signs and it is difficult to get parking enforcement to show up, so the signage may not be an adequate solution to the applicant's concerns. He said it is a modest request that does not do any damage to the street scape.

Speakers:

Michael Rowen, property owner, made a presentation.

Gail Rothrock spoke on behalf of the Historic Alexandria Foundation to support of the staff recommendation for denial of the project as it does not meet the standards for a variance and is contrary to the purpose of the ordinance and the guidelines for the Old and Historic Alexandria District chapter on parking.

Yvonne Callahan agreed with the comments made by Gail Rothrock and said this variance could set a bad precedent.

OTHER BUSINESS

None.

MINUTES

10. Consideration of the minutes from the September 19, 2020 Board of Zoning Appeals Hearing.

BOARD OF ZONING APPEALS ACTION, OCTOBER 19, 2020: On a motion to approve by Mr. Perna, seconded by Mr. Yoo, the Board of Zoning Appeals approved the minutes as submitted. The motion carried on a vote of 6 to 0.

ADJOURNMENT

11. The Board of Zoning Appeals hearing was adjourned at 10:00 p.m.

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